

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHNNY BAUR,

Plaintiff,

v.

POWERSCREEN USA LLC,

Defendant.

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Case No.: 3:04 cv 890 WDS

ORDER

This matter is before the Court on the Motion for Leave to File the Third Amended Complaint filed by the plaintiff, Johnny Baur, on July 6, 2005 (Doc. 47) and the Motion for Extension of Time to File Answer, filed by the third party defendant, Baur Trucking Company, Inc., on July 14, 2005.

No party has objected to the motion to amend. The plaintiff seeks to amend in order to delete his claim under a strict products liability theory and to proceed only on his negligence theory. Federal Rule of Civil Procedure 15(a) provides that leave to amend should be freely granted. As no party has objected and the plaintiff is not adding new claims, the motion is **GRANTED**. The plaintiff shall file his third amended complaint by **July 22, 2005**.

The third party defendant seeks additional time, until August 28, 2005, to file a responsive pleading to the third party complaint. The third party summons was filed and dated on June 8, 2005. Baur Trucking had 20 days from the service of the summons to file its answer. As such, an answer should have been filed on or around July 1, 2005. This motion was filed on July 14, 2005. As such, Baur must show "excusable neglect" pursuant to Federal Rule of Civil Procedure 6(b). There has been no such showing. However, as no party has objected and Baur's counsel indicates that he was just contacted on July 14, 2005, the motion is **GRANTED IN**

PART. Baur Trucking shall have until **August 5, 2005** to file a responsive pleading to the third party complaint.

For the foregoing reasons, the Motion for Leave to File the Third Amended Complaint filed by the plaintiff, Johnny Baur, on July 6, 2005 is **GRANTED** (Doc. 47) and the Motion for Extension of Time to File Answer, filed by the third party defendant, Baur Trucking Company, Inc., on July 14, 2005 is **GRANTED IN PART** (Doc. 49).

DATED: July 19, 2005

s/ Donald G. Wilkerson
DONALD G. WILKERSON
United States Magistrate Judge